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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Bell Atlantic Corporation	)	CC Docket No. 98 - 11
for Relief from Barriers to Deployment	)	
of Advanced Telecommunications Services	)	

Motion to Accept Late-Filed Pleading

MCI Telecommunications Corporation (MCI) hereby files this Motion to Accept Late-Filed Pleading in the above-captioned proceeding. Due to a major computer system error, MCI was unable to timely file its comments on the above-captioned petition. Because the comments drafted in response to Bell Atlantic's petition were corrupted on the company's computer system, by the time we removed the system errors from the document, MCI was not able to print and deliver the document before 5:30pm.

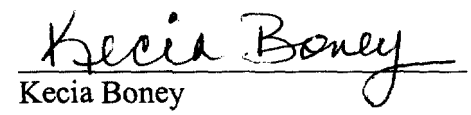
MCI submits that no material harm will be caused to any other party as a result of this one-day delay in filing. The arguments contained in MCI's response to Bell Atlantic's petition are also contained in MCI's comments filed in response to two additional petitions raising similar issues, which were served on Bell Atlantic by U.S. Mail. MCI's comments on these similar petitions reference and discuss the similar issues raised by Bell Atlantic's above-captioned petition. MCI therefore maintains that no party will be prejudiced due to these late-filed comments.

MCI also orally notified Staff handling this petition that the pleading will be filed and hand-delivered Tuesday morning, April 7, 1998.

WHEREFORE, MCI respectfully requests that the Commission grant this Motion for Late-Filed Pleading.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION



Kecia Boney
Lisa Smith
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-3040

Dated: April 7, 1998

CERTIFICATE OF SERVICE

I, Kecia Boney, hereby certify that on this 7th day of April, 1998, I served by first-class United States Mail, postage prepaid, a true copy of the foregoing Motion to Accept Late-Filed Pleading, upon the following:

Jason Oxman*
Policy and Program Planning Division
FCC 1919 M Street, N.W.
Room 534-W
Washington, D.C. 20554

Richard Taranto
2445 M Street, N.W.
Suite 225
Washington, D.C. 20037

John Thorne
Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201

ITS*
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

Linda Kinney
Policy and Program Planning Division
FCC
1919 M Street, N.W.
Washington, D.C. 20554

Kecia Boney

*Denotes Hand-delivery

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OPPOSITION OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

Kecia Boney
Dale Dixon
Larry Blosser
Lisa B. Smith
1801 Pennsylvania Avenue, N.W.
Washington D.C. 20006
(202) 887-3040

Of Counsel:

Anthony C. Epstein
Jenner & Block
601 Thirteenth Street, N.W.
Washington, D.C. 20005
(202) 639-6000

Kevin Sievert
Glen Grochowski
MCI Communications
Local Network Tecnology
400 International Parkway
Richardson, TX 75081
(972) 918-3446

Dated: April 7, 1998

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EXECUTIVE SUMMARY

MCI strongly urges the Commission to promptly deny Bell Atlantic's forbearance request, which seeks forbearance from enforcement of the major procompetitive provisions of the Act that require resale, nondiscriminatory access to unbundled network elements, cost-based rates for unbundled network elements, separate subsidiaries and LATA restrictions. Bell Atlantic essentially wants to engage in the unregulated provision of digital subscriber lines (DSL) and services requiring DSL, as well as Internet backbone services on an interLATA basis throughout its region.

Bell Atlantic is seeking regulatory forbearance that would allow it to control the terms and conditions of access to upgrades in their networks that are necessary for the efficient provision of innovative broadband services. The proposed forbearance, rather than fostering innovation, would stifle innovation. It is especially important that the BOCs not be given this control at this point in time, when they still have bottleneck control of the last mile to the home, the local loop.

In order to facilitate true competition in the advanced services market, competitors need nondiscriminatory access to unbundled DSL-conditioned copper loops and subloops. Competitors should be able to interconnect at any point in the BOC's broadband packet-switched service architecture in order to provide any element of those services. Requiring the BOCs to unbundle their local networks, including copper loops, operations support systems, switching elements, and network enhancements such as DSL modems, for nondiscriminatory access by competitive carriers and innovative users is a much better catalyst for local competition than granting a single provider regulatory carte blanche to deploy a broadband network even as it maintains its bottleneck control over the final mile.

Carriers also need access as unbundled network elements to the portion of the loop from the subscriber's premises to a Subscriber Loop Carrier (SLC) hub to allow interconnection with each requesting CLEC at SLC hubs. Absent such access and interconnection, MCI and other CLECs will not be able to provide xDSL service to more than a significant percentage of subscribers served by any given BOC end office. With assurance of nondiscriminatory access to those conditioned loops and sub-loop elements, CLECs and the BOCs can compete to deploy the DSLAMs and provide broadband services to consumers.

The BOCs erroneously claim that the regulatory environment has deterred investment in access technologies such as xDSL. To the contrary, no matter the regulatory environment, the BOCs have never been a great source of innovation. At this time, as the advanced technologies industry is beginning to witness the benefits of cost reductions in access technologies due to multiple service providers' requests and interest in providing these enhanced services, the BOCs are trying to capitalize on the progress the industry has gained to date and obliterate any market advantage for consumers where there are multiple service providers of xDSL-based services.

Further, the BOCs are wholly incorrect in their assertions that congestion on the existing data networks is the result of a lack of investment and limited capacity of backbone networks. There is no evidence of under investment in Internet facilities in the Northeast and there is no general shortage of Internet capacity as the BOCs claim. While there is an increasing demand for Internet backbone bandwidth, it is not a demand that can only be met by the BOCs. Indeed, the real problem does not stem from the lack of backbone, but instead from the BOCs' control of the local loop -- the only way to access the Internet. The Internet does not operate in a vacuum, as the BOCs would have the Commission believe; it is tied to the public switched network that BOCs control. Bell Atlantic and other BOCS control the last mile, between the customer and the

switch.

While Bell Atlantic claims regulatory forbearance will give them the necessary incentive to deploy innovative technologies and services, there is little preventing the BOCs from doing so now. The BOCs have never had a history of innovation. For example, xDSL technologies have been around for years but the BOCs, including Bell Atlantic, did not deign to deploy it. Similarly, there is nothing preventing Bell Atlantic from constructing Internet backbone transmission facilities outside of its region. Separate subsidiary requirements only apply to the BOCs' in-region activities. The bottom line is that the BOCs seek to deploy innovative services only on their own terms, which do not provide assurance of nondiscriminatory access by competing providers.

Contrary to the BOCs' arguments, Section 706 is not an independent grant of forbearance authority. Any exercise of regulatory forbearance under Section 706 should be consistent with the forbearance limitations contained in Section 10 of the Act. Indeed, Section 10(d) prohibits forbearance from the application of the requirements of Sections 251 and 271. In addition, the Commission lacks authority to forbear from the application of the requirements of Section 272 to any service for which a BOC must obtain prior authorization under Section 271(d)(3). Further, despite the BOCs' arguments to the contrary and the simple fact that the Commission lacks authority to grant the requested forbearance, the requested relief is not necessary to speed the deployment of advanced telecommunications services.

In order to ensure the rapid deployment of advanced technologies, the Commission should focus on the procompetitive provisions in Section 706. Importantly, Section 706 authorizes the Commission to encourage deployment of advanced services in a manner consistent with the public interest and utilize measures that promote competition in the local market. Such

measures should include continued enforcement of Sections 251, 271, 272 and other Commission rules designed to facilitate opening BOC networks to competitive providers. Sections 251, 271, and 272 are intended to foster facilities-based competition to create the potential for opening up the BOC network and giving consumers independent sources of services, but that will take time to occur.

If the Commission grants the BOCs' forbearance requests, the BOCs will be able to extend their bottleneck control of the last mile of the local exchange network — the local loop — to gain control over future advanced telecommunications services provided through the loop. If the innovative users who have driven the development of the Internet had alternative local loop networks to turn to, Bell Atlantic and other BOCs' control over access to xDSL capability in their networks might not raise public policy concerns, but those facilities-based alternatives do not exist, and the Commission must not allow the BOCs to remonopolize the local exchange networks through unregulated control of xDSL and other new network upgrades. Technological advances occur quickly, but when there is just a single entity controlling deployment of the new technology, that entity has the incentive to proceed slowly if to do otherwise threatens its existing market power.

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OPPOSITION OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), pursuant to a Public Notice (DA 98-513) issued by the Federal Communications Commission (the Commission), hereby submits its comments in opposition to the above-referenced petitions filed by Bell Atlantic Corporation (Bell Atlantic or Bell Operating Company (BOC)), seeking forbearance from the regulations mandated in Sections 251, 271 and 272 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act). By its petition, Bell Atlantic seeks forbearance from the application of provisions of the Act that require nondiscriminatory access to unbundled network elements, cost-based rates for unbundled network elements, separate subsidiaries and LATA restrictions so it may engage in the unregulated provision of digital subscriber lines (DSL)[1] and services requiring DSL, as well as Internet backbone services on an interLATA basis throughout their respective regions. As explained below, MCI strongly urges the Commission to promptly Bell Atlantic's request for forbearance.

I. INTRODUCTION

[1] xDSL is a family of digital subscriber line technologies that allow for the provision of broadband services over properly conditioned copper lines. One of the technologies, HDSL, is already widely deployed for the provision of T1 services and other business applications. Another technology, ADSL, is being developed for mass market applications.

By its petition, Bell Atlantic proposes an approach to innovation that is directly inapposite to Congress's and the Commission's approach of mandating affordable, nondiscriminatory interconnection to essential facilities and constraining the incumbents' use of market power. Not only is Bell Atlantic trying to make an end-run around every procompetitive provision of the Act and the Commission's rules, it is also attempting to set back 20 years the Commission's progress in facilitating competition in advanced or enhanced services. Bell Atlantic and other BOC petitioners are seeking regulatory forbearance that would allow them to control the terms and conditions of access to upgrades in their networks that are necessary for the efficient provision of innovative broadband services. It is especially important that Bell Atlantic or any other BOC not be given this control at this point in time, when they still have a bottleneck of the local exchange network -- and especially control of the last mile to the home, the local loop.

In order to facilitate true competition in the advanced services market, competitors need access to unbundled DSL-conditioned copper loops. Requiring Bell Atlantic to unbundle its local networks, including copper loops, operations support systems, switching elements and network enhancements such as DSL modems, for access by competitive carriers is a much better catalyst for local competition than a requirement that competing carriers collocate in thousands of end offices. In areas where competitors do not have facilities, subscribers in those areas will be deprived of the benefits of local competition -- low rates and widespread availability of innovative services. Competition in the marketplace will lead to more rapid innovation because carriers will have the natural incentive to distinguish themselves from competing carriers by bringing new and innovative services to the market. In the end, this incentive would accelerate the technology development cycle, foster competition and reduce costs to service providers and

customers.

Granting any BOC, including Bell Atlantic, forbearance from essentially every procompetitive provision in the Act[2] and the Commission's rules will not lead to competition. Such forbearance would give Bell Atlantic and other BOCs control over access to advanced technologies before competitive alternatives are available, which would mean a return to the old paradigm of a single entity determining when innovation will occur, and a rejection of the new paradigm, most notably employed on the Internet, of users determining when innovations will occur and which innovations will succeed.

Bell Atlantic is fully aware of the fact that section 10(d) of the Act bars the Commission from forbearing from the application and enforcement of both the section 251 unbundling and pricing requirements and the section 271 restriction on BOC provision of in-region interLATA services. Bell Atlantic therefore makes the unpersuasive argument that section 706 is an independent grant of forbearance authority to encourage deployment of broadband services. Section 706 merely references the Commission's forbearance authority, which is contained in section 10 of the Act. Nowhere in the Act or the Commission's orders is there a distinction between BOC facilities used for voice and BOC facilities used for data, information, and other enhanced services. The BOCs are required to open their networks to competitors, no matter what services are provided over their facilities.

If Bell Atlantic is allowed to buttress their monopoly of the local exchange and thwart access to local loops with legal sanction, consumers, Congress, and the Commission will never see competition develop in the advanced services market. While Bell Atlantic claims that

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[2] 47 U.S.C. §§ 251, 271, 272.

regulatory forbearance will give it the necessary incentive to deploy innovative technologies and services,[3] there is little preventing Bell Atlantic from doing so now. xDSL technologies have been around for years and can be deployed without major upfront sunk costs, and therefore do not represent risky investments. Similarly, for example, there is nothing preventing Bell Atlantic from constructing Internet backbone transmission facilities outside of its region. Separate subsidiary requirements only apply to Bell Atlantic's in-region activities. The bottom line is that Bell Atlantic seeks to deploy innovative services only on their own terms, which do not provide assurance of nondiscriminatory access by competing providers. Bell Atlantic does not want competition. Rather, it wants to retain control of the pace, and price, of innovative services.

If the Commission grants Bell Atlantic's forbearance requests, it will be able to extend its bottleneck control of the last mile of the local exchange network — the local loop — to gain control over future advanced telecommunications services provided through the loop. Consider, for example, the implications for xDSL technologies that the Bell Atlantic seeks to deploy in an unregulated environment. Bell Atlantic would have regulators believe that the only way to get xDSL technologies into the local exchange network is to offer regulatory forbearance that would reduce alleged risks associated with the investment.[4] Unbundling increases likelihood that more

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[3] Bell Atlantic Petition at 1.

[4] First, competitive local exchange carriers (CLECs) can efficiently provide DSL technologies as sufficiently as Bell Atlantic and other BOCs. . These primarily consist of placing modems at the customer's premise and modems (DSLAMs) in the central office. A CLEC can place the DSLAM in a collocated space in the BOC's CO just as readily as the BOC can place the DSLAM in its CO. Upfront investment costs to the provider are low. Most investment costs either are borne by the customer (for the modem on the customer premise) or are borne incrementally as customers are added line cards.

services will be available to, and used by, consumers.

Moreover, carriers also need access as unbundled network elements to the portion of the loop from the subscriber's premises to a Subscriber Loop Carrier (SLC) hub to allow interconnection with each requesting CLEC at SLC hubs. Absent such access and interconnection, MCI and other CLECs will not be able to provide xDSL service to a significant percentage of subscribers served by any given BOC end office. The roadblock is the availability of copper loops that have been conditioned to provide DSL and other broadband technologies. Bell Atlantic has control over these loops and thus control over access to these loops. With assurance of nondiscriminatory access to those conditioned loops and sub-loop elements, CLECs and the BOCs can compete to deploy the DSLAMs and provide broadband services to consumers.

Regulatory forbearance does nothing to foster the deployment of new technologies or the provision of innovative services. Rather, regulatory forbearance would impede competition and thus impede innovation. Bell Atlantic wants to deploy xDSL technology strategically, not quickly. Bell Atlantic and other BOCs are using HDSL technology to significantly reduce their costs of providing T1 services to business customers, but they have not passed those savings along to customers -- and they understand that offering unbundled HDSL-conditioned loops would undermine their profits in both large business and small business markets to the benefit of customers. They do not want to have to provide unbundled HDSL-conditioned loops to customers who could then use it to reduce their own costs for T1 services at considerably lower rates. Nor does Bell Atlantic want to provide unbundled HDSL-conditioned loops to potential competitors who could use them to provide high speed (768 kbps), but lower than T1 speed, services to small businesses. As long as Bell Atlantic has control over the terms, conditions, and

rates under which xDSL technology is available to the public, competitors who want to use broadband capabilities to offer new and innovative services will be severely constrained.

If the innovative users who have driven the development of the Internet had alternative local loop networks to turn to, Bell Atlantic and other BOCs' control over access to xDSL capability in their networks might not raise public policy concerns, but those facilities-based alternatives do not exist, and the Commission must not allow the BOCs to buttress their monopoly of the local exchange networks through unregulated control of xDSL and other new network upgrades. Technological advances occur quickly, but when there is just a single entity controlling deployment of the new technology, that entity has the incentive to proceed slowly if to do otherwise threatens its existing market power.

Styled as a means to increase incentives to deploy innovative and advanced services, Bell Atlantic's forbearance request is really an attempt to retain sole control of network development in order to limit demand to its own needs and capabilities. Rather than specifically discuss which sections of the Act or the Commission's rules warrant forbearance, Bell Atlantic seeks full deregulation for packet-switched networks to permit it to develop newer high-speed broadband services. By using such broad terms, Bell Atlantic's request essentially encompasses every procompetitive provision of the Act. Rather than comply with the law and open their markets to competition, Bell Atlantic would prefer to totally eviscerate key provisions in the Act specifically designed for that purpose. Bell Atlantic and other BOCs are attempting to litigate their way out of almost every procompetitive section of the Act. The last thing the Commission should permit is the BOCs closing their networks to competitors under the pretext of promoting innovation.

In order to ensure the rapid deployment of advanced technologies, the Commission

should focus on the procompetitive provisions in section 706. Importantly, section 706 authorizes the Commission to encourage deployment of advanced services in a manner consistent with the public interest and utilize measures that promote competition in the local market. Such measures should include continued enforcement of sections 251, 271, 272 and other Commission rules designed to facilitate opening BOC networks to competitive providers. Sections 251, 271, and 272 are intended to foster facilities-based competition to create the potential for opening up the BOC network and giving consumers independent sources of services, but that will take time to occur. Absent requirements under Section 251 that BOCs provide cost-based access to subloop elements and xDSL equipment, competitors will be effectively precluded from competing and providing xDSL-based services. It would be a cruel hoax on the public if, before the benefits of competition have been realized, the BOCs were given a new means to subvert competition.

II. GRANTING THE REQUESTED FORBEARANCE WILL CREATE ANOTHER BOC NETWORK MONOPOLY AND STIFLE INNOVATION IN ADVANCED TELECOMMUNICATIONS SERVICES

Telecommunications policy in the United States is at a critical juncture, particularly with respect to facilitating local competition. Once local competition is firmly established, widespread deployment of new technologies and advanced telecommunications will certainly follow. In their petitions, the BOCs ask the Commission to grant forbearance from applying important pro-competitive regulations mandated by the Act. Granting the requested forbearance would subvert federal telecommunications policy from encouraging to deterring innovation. With the requested relief, Bell Atlantic would be able to preclude innovative competitors from purchasing unbundled xDSL-conditioned loops, or local loops capable of providing voice and enhanced services or loops and xDSL equipment. Competitors would therefore be precluded

from ordering xDSL-conditioned loops to use in combination with their own facilities to offer new innovative services. Moreover, if the Commission grants the requested forbearance, the distinguishing characteristic of the information economy -- user-driven innovation -- would be obviated, hindering technological growth and consumer choice, and creating an unfair advantage such that BOCs will be able to exercise unchecked control over the direction and development of advanced telecommunications.

The information technologies marketplace is a unique economy in which user demand drives innovation and competition.[5] As the Commission has recognized in numerous decisions, user experimentation with new applications and services determines which services succeed and which fail. Accordingly, the Commission's policies regarding the deployment of advanced services should promote the greatest number of choices for user experimentation. Formulating policies that limit user access or choice will decrease network experimentation and stifle the growth of advanced technologies.

No single segment of an industry should have the ability to control and direct the future of advanced technologies. Bell Atlantic forbearance request, if granted, would undermine the Commission's recent direction where innovation is the product of end user decision. Rapid growth and vibrant competition are factors that create the greatest number of options for user experimentation in the advanced technologies marketplace, creating a unique economy and unpredictable atmosphere. Although it is impossible to predict which technology will become the market favorite, any action that limits market choices will lead to an easily predictable result:

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[5] For a full account of user-driven innovation and the information technologies marketplace, see Francois Bar & Michael Borrus, The Path Not Yet Taken: User-driven Innovation and US Telecommunications Policy (unpublished manuscript, attached as Exhibit 1).

a stagnant market held hostage by the monopolist Bell Atlantic's lack of innovation.

The growth and development of the Internet provides the most tangible example of the economy in the area of advanced technologies. The Internet provides flexible and affordable end-user access, and its evolution has been driven by these end users who have been able to experiment with a myriad of emerging applications. Appropriately, the shape of the Internet is a product of the users' desires and needs. Had local telephone companies been the exclusive source of Internet services integrated with local telephone services, such expansion and innovation would have never occurred.

To ensure that customers have access to the broadest opportunities, the Commission must not prematurely deregulate monopolists and thus ensure the development of a bottleneck that will create barriers that deny competitive entry. Without being required to provide widespread access to the networks, that bottleneck will become more intractable and incumbents will have little or no incentive to innovate in their own networks.

The unique competition and user-driven innovation processes inherent in the realm of advanced telecommunications generate broad economic benefits dwarfing those that might result from the innovation of any monopoly provider. Opening markets to create competition in order to spur innovation is not a new step for the Commission. The opening of the long distance market, for example, has driven down prices and accelerated the introduction of technology into the network. In fact, the Commission's long history of opening markets to competition has led to significant technological advancement.[6]

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[6] See Specialized Common Carrier Services, 29 FCC d. 870, 940 (1971), aff'd sub nom. Washington Utilities Comm'n v. FCC, 513 F.d. 1142 (9th Cir. 1973), cert. denied. 423 U.S. 836 (1973) (stating "where a carrier has monopoly control over essential facilities we will not condone any policy or practice whereby such carrier would discriminate in favor of an affiliated

More recently, the Commission promoted reliable high-speed voice and data connections by allowing data intensive companies to combine their facilities with portions of a local telephone company's network; and the Commission encouraged the production of software interfaces at affordable tariffed rates.[7] These examples indicate that the Commission has historically recognized and promoted the user-driven innovation economy of advanced technologies. At this important juncture, the Commission should not turn its back on the fact that advanced technologies are part of a uniquely competitive and innovative marketplace.

Requesting regulatory relief in the name of innovation is not a new tactic for Bell Atlantic and other BOCs. In a number of cases in the past, the BOCs have sought relief from federal regulations designed to open their markets. For example, the BOCs touted grand plans to provide video once the ban on telephone company provision of in-region cable services was

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carrier or show favoritism among competitors"); see also In the Matter of Use of The Carterfone Device in Message Toll Telephone Service, Docket No. 16942 13 FCC d. 420 (1960); MCI v. FCC (Execunet I), 561 F.d. 365 (D.D.C. 1977), cert. denied, 434 U.S. 1041 (1978); MCI v. FCC (Execunet II), 580 F.d. 590 (D.D.C.), cert. denied 439 U.S. 980 (1978); Computer I, 28 FCC d. 267 (1971); Computer II, 77 FCC d. 384 (1980); In the Matter of Bell SystemTariff Offerings of Local Distribution Facilities for Use by Other Common Carriers, Docket No. 19896 ("Decision"), 46 FCC d. 413, 422 (1974); In the Matter of Bell SystemTariff Offerings of Local Distribution Facilities for Use by Other Common Carriers, Docket No. 19896 *Memorandum Opinion and Order to Show Cause*, 44 FCC d. 245, 249 (1973); In the Matter of Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities, Docket No. 16495 ("Proposed Second Report and Order"), 34 FCC d. 9, 65 (1972).

[7] See In the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, FCC 92-440, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 ("Special Access Order") (rel. October 19, 1992); see also In the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, FCC 93-379, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd ("Switched Access Order") (rel. September 2, 1993); see also In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, FCC 98-8, Further Notice of Proposed Rulemaking (rel. January 30, 1998).

lifted; however, such plans were quickly abandoned after such relief was affected. In the area of information services, the BOCs received various waivers over the course of a decade seeking relief from structure separation and open network requirements. In the end, however, the BOCs have provided very little in the way of innovation and growth. In fact, with the exception of voicemail, the BOCs have almost nothing to show for their innovation plans in the area of information services. In most cases, the BOCs' plans to innovate were abandoned with the BOCs blaming their mediocre performance on the earlier interLATA restrictions under the MFJ. Today, as evidenced by the instant petitions, the BOCs continue to blame their failure to innovate on interLATA restrictions mandated by the Act. The Commission should not be fooled by the BOCs' blame game.

The Act's restrictions on BOC-provided in-region interLATA service serve as an incentive given to the BOCs to open their local markets. If the forbearance requested by Bell Atlantic in its petition is granted by the Commission, Bell Atlantic would no longer have a reason to innovate because they would foreclose competition by others and could control the deployment of advanced services by creating technologies that would be less than "innovative." Although Bell Atlantic stresses in its petition that innovation is their goal, it should be noted that nothing is standing in the way of BOC innovation in broadband networks. After all, Bell Atlantic is free to build its proposed broadband networks outside of its region. Sections 271 and 272 of the Act apply only to in-region service. The Commission should not allow Bell Atlantic's innovation history to repeat itself by granting the requested forbearance only to have Bell Atlantic extend its monopoly to include advanced telecommunications services.

III. THE ACT AND THE PUBLIC INTEREST REQUIRE CONTINUED PROTECTION AGAINST MISUSE OF BOC LOCAL MONOPOLY POWER

Bell Atlantic's petition is an attempt to obtain unlawful and unwarranted relief from the procompetitive provisions of the Act, in particular, sections 251 and 271. Rather than seeking incentives to invest in xDSL equipment, Bell Atlantic clearly wants its longstanding monopoly power over the last mile to be unregulated. Nothing in the BOCs' petitions justifies such relief. The Commission should enforce section 251's unbundling and pricing requirements and section 271's restrictions on in-region interLATA services until section 271 authority is granted. It is neither in the public interest nor legal for the Commission to forbear from enforcing key provisions of the Act targeted to opening the BOCs' local markets - both by requiring unbundling of the BOCs' network elements and by restricting BOC provision of in-region interLATA services until local markets are fully open to competition.

A. Competitors Need Access to xDSL-Equipped Local Loops in Order to Effect Widespread Deployment of xDSL-Based Services

Like other carriers, MCI is interested in offering DSL-based services using Bell Atlantic and other BOC unbundled conditioned loops to compete with the BOCs and other service providers.[8] Requiring the BOCs to unbundle their local networks, including copper loops, operations support systems, switching elements and network enhancements such as DSL modems, to competitive carriers is a much better catalyst for local competition than a requirement that carriers collocate at thousands of end offices. The requirement to collocate in thousands of end offices -- and only to serve what may be a handful of xDSL customers from a

[8]Furthermore, to the extent that Bell Atlantic and other BOCs view xDSL capability as a separate network element from unbundled loop without such capability, the Commission should require the BOCs to combine the loop network element and xDSL network element for competitors. This requirement would be consistent with the Commission's Section 706 authority to use "other regulating methods that remove barriers to infrastructure investment." 47 U.S.C. Section 706.

particular end office -- is very time consuming and prohibitively expensive. Collocation is expensive and requires significant upfront costs, sunk costs, and collocation space is not available in every end office. The Act guarantees CLECs access to more than just unbundled loops and collocation for services other than high speed broadband switched services. CLECs need alternative entry strategies to provide local xDSL services for exactly the same reasons they need access to more than unbundled loops to provide other local services.

Competition in the marketplace will lead to more rapid innovation because carriers will have the natural incentive to distinguish themselves from competing carriers by bringing new and innovative services to the market. In the end, this incentive would accelerate the technology development cycle, foster and reduce costs to service providers and customers.

Bell Atlantic erroneously claims that regulatory forbearance would help speed deployment of high-speed broadband services.[9] To the contrary, unbundling local loops capable of voice and enhanced services, preserving existing regulatory safeguards on the BOCs and opening the market to competition will help drive the widespread deployment of advanced telecommunications. MCI is not requesting that it be permitted to receive something from the BOCs for nothing in return. To the contrary, MCI is willing to pay cost-based rates that include a reasonable risk-adjusted profit. Bell Atlantic and other BOCs will be fully compensated for use of their facilities. Because the Act requires that the prices be set at cost-based rates, competitors will be able to price their offerings to consumers based on efficient forward-looking cost of

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[9] Bell Atlantic Petition at 3-4 ("Bell Atlantic should not be subject to the investment-deterring requirement of mandatory access by competitors to such services on a discounted wholesale basis."); US West Petition at 4, 35 (US West describes that it has no incentive to invest in xDSL-related equipment "because the company must turn its innovative new services over to its competitors at significant discounts.").

network elements, such as unbundled local loops, and thus will be able to drive prices to competitive levels.

Consistent with the Act and Commission precedent, competitors should continue to be afforded access to unbundled local loops capable of providing voice and enhanced services and resold unbundled voice and enhanced services. Indeed, the very section of the Act upon which the BOCs base their current petitions states that one of the tools available to the Commission to encourage the deployment of advanced telecommunications is the use of "measures that promote competition in the local telecommunications market." 47 U.S.C. § 706(a). Any offering of DSL-based services should be subject to the same requirements of unbundling and pricing as the analog local network until such time as the BOCs' ability to leverage their current market power is no longer an issue.

Bell Atlantic should not be permitted to mass deploy xDSL-based services without being required to provide such service on generally available terms or offer it on a wholesale basis to any requesting carrier. Bell AtLantic would like nothing better than to establish a monopoly on DSL technology-based solutions, which would allow it to further bundle enhanced services at the local level and lock in customers. The consequence would be to prevent competing carriers from offering a similar product or service without building duplicative copper facilities to customer premises or deploying an alternative access technology, such as fiber, wireless or coaxial cable. Contrary to the arguments made by Bell Atlantic,[10] there are no viable alternatives that provide the speed, power and widespread service coverage of xDSL technology, which appears to be the most promising technology today, and to have major advantages over current alternatives. Cable

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[10] Bell Atlantic Petition at 21.

modem technology is inferior to the service available through DSL-based capabilities.[11] For example, cable modem technology is limited in the number of customers it can serve because the cable operators provide it as a shared data service. Accordingly, the Commission should not permit the BOCs to monopolize DSL technology, leaving potential competing providers and subscribers with no acceptable alternative.

It is not in the public interest for the Commission to forbear from enforcing key provisions of the Act targeted to opening the BOCs' local markets - both by requiring unbundling of the incumbents' network elements, and by restricting BOC provision of in-region interLATA services until local markets are open to competition. Ensuring that unbundled xDSL-conditioned local loops are available to competing carriers will insure that the BOC monopoly over the loop will not continue and that the full-fledged competition envisioned by Congress will be established. As a result, if the BOCs are prematurely freed from regulatory oversight, they can and will leverage their market power to become dominant players in the broadband data, Internet access and long distance markets -- while retaining their local service monopoly.

B. The Regulatory Environment Has Not Deterred xDSL Investment

Bell Atlantic erroneously claims that the regulatory environment has deterred investment in access technologies such as xDSL.[12] Interestingly, federal regulations have not slowed the deployment of high-speed broadband services. To the contrary, no matter the regulatory environment, the BOCs have never been a great source of innovation.

It is not readily apparent to MCI which federal rules, if any, are responsible for Bell

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[11] See Declaration of Glen Grochowski (attached as Exhibit 2).

[12] Bell Atlantic Petition at 10.

Atlantic's lack of innovation. Although Bell Atlantic claims that freedom from structural separation requirements would give it the incentive to deploy innovative technologies and services, Bell Atlantic has not deployed such services when allowed to structurally integrate. For pending resolution of the Computer III Remand proceeding,[13] Bell Atlantic and other the BOCs were granted waivers of the Commission's structural separation rules in order to provide local and intraLATA information services jointly with their local services.[14] Despite this structural relief, Bell Atlantic and other BOCs failed to produce significant innovative information services. xDSL technologies, for example, have been around for several years, but Bell Atlantic and other BOCs have not, until now, shown any interest in deploying them for residential high-speed Internet access.

Competitive entry has historically been the catalyst for innovation. As Ameritech describes in its Petition,[15] the threat of oncoming competition will spur the incumbent provider to improve performance and lower prices. This effect has little to do with the influence of regulation, but everything to do with the power of competition. Network access upgrades have been deployed faster in a competitive environment. One only need look to the opening of the long distance market to see that competition drives prices down, drives technology faster into the network and delivers enhanced service roll-out to the customer sooner. In comparison, the roll-out of ISDN services in the BOC network demonstrates how a non-competitive environment

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[13] California v. FCC, 39 F.3d 919 (9th Cir. 1994).

[14] Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 FCC d. 384 (1980), mod. on reconsideration, 84 FCC d. 50 (1981); aff'd sub nom Computer and Communications Industry Ass'n v. FCC, 693 F.d. 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (12983).

[15] Ameritech Petition at 32-33.